

**SELF-INSURING EMPLOYERS EVALUATION BOARD
INFORMAL CONFERENCE FINDINGS
IN THE MATTER OF:
Schottenstein Stores Corporation (Employer), Risk No. 20003781 [REDACTED]
[REDACTED] (Injured Worker), Claim No. [REDACTED]
Complaint No. 16133**



The Donahey Law Firm LLP
Attn: Curtis M. Fifner
495 South High Street, Suite 100
Columbus, OH 43215-5058

Schottenstein Stores Corporation
Attn: Workers' Compensation Administrator
1800 Moler Road
Columbus, OH 43207

Schottenstein, Zox & Dunn Co. L.P.A.
Attn: Jennifer M. McDaniel
41 South High Street, Suite 2600
Columbus, OH 43215

KKSG & Associates, Inc.
87 East Wilson Bridge Road, Suite 201
Worthington, OH 43085-2338

FOR THE INJURED WORKER: Curtis Fifner and [REDACTED]
FOR THE EMPLOYER: Corey Crognale
FOR THE ADMINISTRATOR: Jean Krum

This matter was set for informal conference before the Self-Insuring Employers Evaluation Board on May 26, 2009 on Complaint No. 16133. The complaint alleged that the employer improperly terminated temporary total disability compensation and further alleged that the employer's actions in terminating the injured worker's employment were retaliatory in nature.

At the outset, the Board finds, and the parties agree, that the Board has no jurisdiction over allegations of a retaliatory discharge under R.C. 4123.90.

[REDACTED] was injured on November 12, 2007 and the employer began paying temporary total disability compensation on November 20, 2007. The employer made payment of such compensation based upon disability forms completed by the attending physician, Dr. Hauser. In the disability form completed by Dr. Hauser on January 15, 2008, Dr. Hauser noted that the injured worker could perform sedentary work but also noted "N/A" in response to the question of the light duty release date. In a certified letter to the injured worker dated January 24, 2008, from Matt Strauss, the store manager, the employer memorialized a meeting with the injured worker on January 18, 2008. The letter stated:

"On January 18, 2008, you met with me and Joe Mann regarding your return to work. According to your doctor, you were released to return to work, with restrictions, effective January 17, 2008. I informed you that we were able to bring you back on a full-time basis, in your same classifications and temporarily accommodate your restrictions, you replied by saying no and that you could not come back to work. I informed you that you need to come back to work because you were released to do so by your doctor. You left the store on January 18 and you have not yet returned to work per

my instructions nor have you called. Based on our policy, two (2) consecutive days of No Call/No Show is considered job abandonment and grounds for immediate termination. Effective January 24, 2008, your employment with Value City Furniture has been terminated.”

The employer terminated temporary total disability compensation on January 20, 2008.

R.C. 4123.56(A) provides in pertinent part:

“...In the case of a self-insuring employer, payments shall be for a duration based upon the medical reports of the attending physician. If the employer disputes the attending physicians’ report, payments may be terminated only upon application and hearing by a district hearing officer pursuant to division (C) of section 4123.511 of the Revised Code. Payments shall continue pending the determination of the matter, however payment shall not be made for the period when any employee has returned to work, when an employee’s treating physician has made a written statement that the employee is capable of returning to the employee’s former position of employment, when work within the physical capabilities of the employee is made available by the employer or another employer, or when the employee has reached maximum medical improvement...”

Ohio Adm.Code 4121-3-32(A)(6) defines “job offer” as follows:

“‘Job offer’ means a proposal, made in good faith, of suitable employment within a reasonable proximity of the injured worker’s residence. If the injured worker refuses an oral job offer and the employer intends to initiate proceedings to terminate temporary total disability compensation, the employer must give the injured worker a written job offer at least forty-eight hours prior to initiating proceedings. If the employer files a motion with the industrial commission to terminate payment of compensation, a copy of the written offer must accompany the employer’s initial filing.”

Ohio Adm.Code 4121-3-32(B)(1) sets forth the circumstances under which a self-insuring employer may terminate temporary total disability compensation without a hearing. Those circumstances are limited to when the employee returns to work; the employee’s treating physician finds that the employee is capable of returning to his former position of employment or other available suitable employment; or the employee’s treating physician finds the employee has reached maximum medical improvement.

The Board notes that subsequent to the filing of the self-insured complaint, the issue of termination of temporary total and the job offer were adjudicated by the Industrial Commission. In an order issued August 7, 2008, a Staff Hearing Officer of the Industrial Commission found that the employer did not give the injured worker a written job offer of suitable employment within his claim-related restrictions and therefore there was not a basis to terminate temporary total compensation for that reason. The Staff Hearing Officer further found that Dr. Hauser did not release the injured worker for full duty. The Staff Hearing Officer ordered payment of temporary total disability compensation from the date of last payment through June 2, 2008 and to continue upon submission of supporting medical evidence.

Mr. Crognale conceded that the employer wrongfully terminated temporary total disability compensation and assured the Board that the employer has changed its protocol with respect to job offers.

Upon motion made by Mr. Wells, seconded by Mr. Royer, the Board finds Complaint No. 16133 valid. The Board finds the employer terminated temporary total disability compensation, without a hearing, in violation of R.C. 4123.56 and Ohio Adm.Code 4121-3-32. Specifically, the Board finds that the injured worker had not returned to work, the injured worker’s treating physician had not released the injured worker to return to his former position of employment or other suitable employment and the injured worker’s treating physician had not found the injured worker had reached maximum medical improvement. Additionally, as noted in the

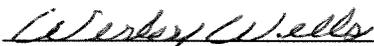
Staff Hearing Officer order referenced above, once the injured worker refused the verbal job offer, the employer failed to provide the injured worker with a written job offer as required by Ohio Adm.Code 4121-3-32(A).

In summary, R.C. 4123.56 and Ohio Adm.Code 4121-3-32(B)(1) set forth the circumstances under which a self-insuring employer may terminate compensation without a hearing. The Board finds such circumstances did not exist in this case. A copy of the valid complaint shall be placed in the self-insuring employer's risk file pursuant to Ohio Adm.Code 4123-19-09(C) to be considered at the time of renewal consideration. The Board accepts the counsel for employer's assurances that the self-insuring employer has taken the steps necessary to minimize the possibility of reoccurrence of a similar complaint involving termination of temporary total disability compensation and a light duty job offer.

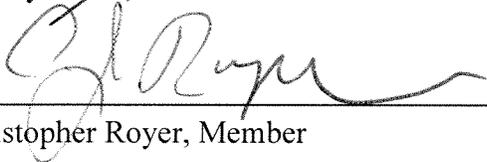
SELF-INSURING EMPLOYERS EVALUATION BOARD



Kevin R. Abrams, Chairman YES



Wesley Wells, Member YES



Christopher Royer, Member YES

DATE MAILED: 14th DAY OF July, 2009